



CITY OF DURHAM | DURHAM COUNTY  
NORTH CAROLINA



**Date:** August 3, 2015

**To:** Thomas J. Bonfield, City Manager  
**Through:** Keith Chadwell, Deputy City Manager  
**From:** Steven L. Medlin, AICP, Planning Director  
**Subject:** *Unified Development Ordinance* Text Amendment, Riparian Buffer Setback and Lot of Record (TC1500004)

**Summary.** The Planning Department initiates annual review of requested technical and other minor changes to the *Unified Development Ordinance* (UDO). However, staff has identified two technical changes that should be considered ahead of the more expansive list currently under review. The first change involves encroachment into the ten-foot setback from riparian buffers, and the second change involves the definition of “lot of record.”

**Recommendation.** Staff recommends approval of the attached Ordinance to amend Article 8, Environmental Protection; and Article 16, Definitions, of the *Unified Development Ordinance* (TC1500004); and recommends approval of a consistency statement declaring the request consistent with the Durham *Comprehensive Plan* and that the request is reasonable and in the public interest. Information supporting these recommendations is found within this memo, attached documents, and any information provided through the public hearing.

**Background.** The proposed changes are identified as necessary technical corrections to remove conflicts between ordinance provisions or to correct inaccurate regulations. Staff determined these were necessary to initiate ahead of the typical yearly set of technical corrections that are currently under review.

The Planning Commission recommended approval, 11-0, of the text amendment on June 9, 2015. The Planning Commission determined that the Ordinance request is consistent with the adopted *Comprehensive Plan* and that the request is reasonable and in the public interest based on comments received at the public hearing and the information in the staff report. The Planning Commission also suggested reviewing the proposed text to verify it allowed intrusion into the buffer setback only when associated with uses that received approval to intrude into the riparian buffer.

The Durham County Board of Commissioners will consider the amendments at its August 11, 2015, meeting.

**Issues.** The following are proposed changes to the UDO staff has identified as a priority to address.

- **Sec. 8.5, Riparian Buffer Protection Standards**

- 8.5.10, Uses**

- C. Buildings and other features that require grading and construction shall be set back at least ten feet from the edge of the riparian buffer. When an encroachment into a riparian buffer is permitted either by right, through required authorization, or from approval of a variance, grading and construction necessary for that encroachment shall be allowed within the set back.

*Analysis:* Paragraph 8.5.10, Uses, provides a list of uses (driveway crossings, utility crossings, trails, drainage ditches, stormwater improvements, etc.) that can be placed within required riparian (i.e. “stream”) buffers by-right or with a “No Practical Alternatives Authorization” from the applicable City or State agency. These uses are typical land improvements associated with development in Durham.

Staff recently determined that this section does not grant the associated encroachment into the 10-foot buffer setback often needed to construct the allowed use within the buffer. Thus, a variance to encroach into the buffer setback would be required to construct the use that is allowed in the actual buffer area.

The Planning Commission raised concerns with the text proposed at its meeting on June 9, 2015, suggesting modification to ensure the intent is solely to allow intrusion into the buffer setback only in connection with a use that has received approval to intrude into the riparian buffer. Staff has reviewed and clarified the text change, as indicated above and within the attached ordinance.

- **Sec. 16.3, Defined Terms**

- ~~**Lot:** A parcel of land to be used, developed, or built upon.~~

- Lot of Record:** Also called “lot” or “parcel”, A-a parcel of land described by metes and bounds, or otherwise delineated by property boundary dimensions, on a plat recorded in the office of the appropriate Register of Deeds ~~of Durham County.~~

**Parcel: See “lot of record”.**

*Analysis:* The current definition for “lot of record” only recognizes those lots recorded in Durham County. However, there are areas within the City of Durham located in counties other than Durham County. Furthermore, older plats do not always delineate each lot with a metes and bounds description, but the property line dimensions are delineated. The other changes indicated are to clarify terms.

**Consistency with the *Comprehensive Plan*; Reasonable and in the Public Interest.** Staff has determined that the proposed changes are reasonable. The proposed changes are technical in order to resolve regulatory conflicts or inaccuracies. The proposed changes do not conflict with any policies, goals, or objectives of the *Comprehensive Plan*. Although the proposed changes are not specifically addressed within the plan, the proposed change to paragraph 8.5.10, Uses, appears to meet the tenants of the following:

- **Chapter 7, Conservation and Environment Element**  
**Summary of Issues**
  1. Protection of Natural Features. New development can significantly impact natural features, such as floodplains, streams, steep slope areas, wetlands and natural vegetation. Land use policies and regulations should strike a balance between achieving broader community objectives of environmental protection and protecting ecosystem integrity while recognizing the rights of private property owners.

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**Attachments**

**Attachment A:** An Ordinance to Amend the *Unified Development Ordinance* Regarding the Riparian Buffer Setback and Definitions Associated with “Lot of Record” (TC1500004)

**Attachment B:** Statement of Consistency Pursuant to NCGS § 160A-383

**Attachment C:** Planning Commission Comments